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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,601	04/03/2000	BERNARD ABRAMOVICI	IVD994	2604

5487 7590 03/31/2006

ROSS J. OEHLER
AVENTIS PHARMACEUTICALS INC.
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER, NJ 08807

EXAMINER	
JAGOE, DONNA A	

ART UNIT	PAPER NUMBER
1614	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/446,601	Applicant(s) ABRAMOVICI ET AL.	
	Examiner Donna Jagoe	Art Unit 1614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-7 and 9-22*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Christopher S. F. Low

CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 3. NOTE: applicant has added poloxamers to claim 1 as a non-ionic hydrophilic surfactant.. Story teaches Poloxamers to solubilize insoluble agents. Martin Algarra et al. teach a non ionic hydrophilic surfactant to specifically solubilize amiodarone. Although applicant has aded the words "selected from poloxamers" to claim 1, The claim language comprising leaves the claim open for the inclusion of unspecified ingredients, even in major amounts. Thus, it does not exclude the polysorbate of Martin Algarra et al. Applicant argues that the proportion of surfactant to NSAID ratio is from 1:5.7 to 1:50. This fact is not germane to the case since the Story et al reference is used within the 35 U.S.C. §103(a) rejection to demonstrate that it is well-known that non-ionic surfactants such as polysorbate 80 are known and used in the art to solubilize insoluble drugs. As anyone of ordinary skill in the art will appreciate, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves no more than the application of routine skill in the art of chemical engineering, as in altering the volume in which the dose of medication is to be administered. See, only as exemplary, the dicta of In re Aller 105 USPQ 233. Normally, change in temperature, concentration, or both, is not patentable modification; however, such changes may impart patentability to process if ranges claimed produce new and unexpected result which is different in kind and not merely in degree from results of prior art; such ranges are termed "critical" ranges, and applicant has burden of proving such criticality; even though applicant's modification results in great improvement and utility over prior art, it may still not be patentable if modification was within capabilities of one skilled in art; more particularly, where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. Similarly, the determination of optimal values within a disclosed range is generally considered obvious. See, only as exemplary, the dicta of In re Boesch 205 USPQ 215. Clearly, Martin-Algarra et al. recognize the problem of erratic and variable absorption of amiodarone and also recites that a small amount of non-ionic hydrophilic surfactant solves the problem. 7.5 mg of amiodarone is dissolved in 10 ml of 0.4mM of a polysorbate 80 solution. Applicant argues that only an in-situ rat gut technique is used. The in-situ rat gut technique is employed to observe the absorption of amiodarone from oral administration. Although is is not administered by mouth, the results that are gleaned from the rat-gut technique would convey to oral administration of the amiodarone.